WOLD TRONA CO., INC.

IBLA 97-69 Decided September 22, 1999

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting the high bid for a tract offered at a competitive sodium lease sale. WYW 139802.

Affirmed.

1. Mineral Leasing Act: Generally--Sodium Leases and Permits: Leases

Section 24 of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 262 (1994), authorizes the Secretary of the Interior, under certain circumstances, to issue leases for sodium deposits in public lands through a competitive bidding process established by regulation. Under 43 C.F.R. § 3525.5, an acceptable bid for a sodium lease must meet or exceed the fair market value of the lands offered for lease. A decision to reject the high bid for a tract of land in a competitive sodium lease sale will be affirmed when there is a rational basis for the conclusion that the highest bid does not represent the fair market value of the tract of land.

APPEARANCES: Peter I. Wold, Vice President, Wold Trona Company, Casper, Wyoming, for appellant; Lowell L. Madsen, Esq., Assistant Regional Solicitor, Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Wold Trona Company, Inc. (WTCI), has appealed from an October 16, 1996, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its high bid for Tract G offered at the competitive sodium lease sale held in Casper, Wyoming, on September 26, 1996. WTCI submitted the only bid for the 1,269.52-acre tract, $262,280.40 or $206.52 per acre. On September 30, 1996, the BLM post-sale panel convened. It determined that WTCI's bid was properly submitted, that WTCI was qualified to hold the lease, but that WTCI's bid did not meet or exceed the presale estimate of fair market value. The panel recommended that the bid be rejected.

The Wyoming State Director, BLM, concurred in that recommendation, and BLM issued its decision rejecting the bid because it did not represent fair market value for the tract.

WTCI states that its appeal is based on the premise that BLM's estimate of the reserves for Tract G is correct, that sequential mining of upper economic trona beds will occur first, and that WTCI's bid for Tract G exceeds the minimum bid requirement posted by BLM. WTCI takes issue with what it terms BLM's "economic valuation" and "comparable sales" valuations for Tract G. WTCI argues that its bid, based on comparable private lease sales not available to BLM at the time of the sale, is a fair market value bid.

[1] Section 24 of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 262 (1994), authorizes the Secretary of the Interior, under certain circumstances, to issue leases for sodium deposits in public lands through a competitive bidding process established by regulation. In 43 C.F.R. Subpart 3525 the Secretary established procedures for a competitive bidding process for sodium leases. Those regulations require that an acceptable bid must meet or exceed the fair market value of the lands offered for lease. 43 C.F.R. § 3525.5.

While there is little, if any, Departmental precedent relating to rejection of high bids in competitive sodium lease sales, prior Board decisions addressing the rejection of high bids in competitive oil and gas cases provide legal authority that may be applied in this case.

The Secretary's discretionary authority to reject a bid for a competitive oil and gas lease if the bid was inadequate was consistently upheld by this Board. Hanna Oil & Gas Co., 113 IBLA 76, 78 (1990); Maralo Inc., 110 IBLA 266, 267 (1989). 1/ This Board sustained that authority,

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1/ This precedent relates to 30 U.S.C. § 226(b) (1982), prior to the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), as amended, 30 U.S.C. § 226 (1994). Under 30 U.S.C. § 226(b)(1)(A) (1994), Congress provided for oil and gas lease sales by oral bidding and directed that "[t]he Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for bid." Moreover, Congress established the national minimum acceptable bid to be $2 per acre for 2 years from Dec. 22, 1987, the date of passage of FOOGLRA, with authority for the Secretary to establish a higher national minimum acceptable bid, by regulation, after that 2-year period. 30 U.S.C. § 226(b)(1)(B) (1994). In 1988, the regulations in 43 C.F.R. Part 3120 underwent a major revision, largely occasioned by the adoption of FOOGLRA. Therein, the Department provided at 43 C.F.R. § 3120.5-1(b) that the winning bid at an oral auction would be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. However, the competitive leasing regulations applicable to sodium leases continue to require that an acceptable bid meet or exceed the fair market value of the offered lands. 43 C.F.R. § 3525.5.

so long as there was a rational basis for the conclusion that the highest bid did not represent the fair market value of the parcel. Victor P. Smith, 101 IBLA 100, 103 (1988); Viking Resources Corp., 80 IBLA 245, 246 (1984). We also concluded that, even if there was not a rational basis for rejection of the high bid, the high bidder had to establish that its bid represented fair market value in order to be awarded the lease. Michael Shearn, 104 IBLA 317, 320 (1988); Miller Brothers Oil Corp., 100 IBLA 172, 175 (1987); Burton/Hawks, Inc., 98 IBLA 118, 122 (1987).

Rejection in this case was based on the failure of WTCI's bid to meet or exceed BLM's presale evaluation. BLM based its evaluation on the comparable sales approach, rather than on the income approach. Its rationale was that the income approach would be difficult to develop because accurate estimates of mining and processing costs are closely protected by the existing producers in the area and the Tract G reserves are not expected to be mined for several decades at the earliest.

BLM asserts that in its comparable sales approach it "used all the lease sales in the immediate area of the tracts offered including the Vulcan, Olin, and Occidental sales to Wold. * * * A total of fifteen transactions were examined in the presale appraisal analysis." (Answer, Attachment 1 at 1-2.) Thus, in fact, the Appraisal Report confirms that BLM utilized in its presale evaluation the three sales that WTCI claims were not available to BLM.

BLM explained its analysis of WTCI's bid in its answer, Attachment 1 at page 2, as follows:

> The actual sales prices of the private transactions are highly confidential but the range of selling prices for pure recoverable trona was from $0.0152/T [ton] to $0.1040/T. This range excluded the two Federal tracts from the May 1996 sale mentioned by Wold since they represent tracts with near term development potential to adjacent existing mines while the tracts offered in the September sale are long term reserves. The Wold bid on Tract G based on pure recoverable trona was $0.0098 which is lower than any other sale in the area and less than the BLM's presale estimate.
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> Looking at the actual bids received in this sale, the Wold bids show little distinction between tracts receiving high or low bids from other bidders. Wold bid essentially the same $206/A for Tracts B, F, and G. Tract B received other bids of $1007 and $2422/A, five and twelve times higher than the Wold bid. Tract F received a bid of $580/A, more than double the Wold bid. Even Tract E, where Wold bid over $400/A, received other bids of $790 and $1260/A, two to three times higher than the Wold bid.

BLM emphasizes the point that the ore on Tract G represents long term reserves with no immediate potential for economical production, an assessment with which WTCI does not disagree. BLM continues:

> [S]ince leasing is discretionary and since there is no immediate threat of losing the resource due to bypass, BLM should not accept any bid that does not meet or exceed the presale estimate unless additional information from the sale itself supports a lower value. Actually, the reverse is true for this case. The other September sales indicate that a value even higher than the presale estimate could be expected if Tract G were held for lease at a later date.
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> This is clearly illustrated by the sale of Tract H. This tract was offered as Tract 3 in the May 1996 sale and received a single bid of $424,960 which was rejected since it was less than the presale estimate of value. The reoffer in September 1996 of the identical parcel as Tract H received a single bid from the same company of $700,160, over 60% higher. This shows that a company's first bid on an isolated tract may not always meet or exceed FMV or the company's real estimate of value.

Id. at 2-3.

WTCI attacks BLM's fair market value evaluation on the basis that because BLM requires that the uppermost economic beds be mined first, valuation of the tract should be limited to recoverable reserves in the first mineable bed, Bed 17. 2/ WTCI provides a table showing the dollars "per ton bid of trona in Bed 17" for Tracts B, C, D, E, F, G, and H. (SOR, Table 3.) It claims, based on such a comparison, that its bid was the second highest in the sale.

BLM disagrees with WTCI's "economic value" approach or any approach that would discount the value of all but the first mineable trona bed. BLM asserts that its leases do not limit recovery to Bed 17 or to any individual bed.

> The successful lessee may recover sodium from any bed by any means as long as maximum recovery of the resource is accomplished. While many beds may contribute little to the total value of a tract (unmineable or unrecoverable), comparable sales show that it is inaccurate and incorrect to eliminate all reserves except Bed 17 from value consideration.

(Answer, Attachment 1 at 3.)

2/ In its statement of reasons (SOR) at page 13, Table 2, WTCI shows that 99.43 percent of its bid value for Tract 17 related to Bed 17 reserves.

The record clearly shows a rational basis for BLM's rejection of WTCI's high bid for Tract G. WTCI's bid was below BLM's presale estimate and BLM's review of the September sales in Attachment 1 of its answer shows conclusively that WTCI's bid did not reflect fair market value for Tract G.

Further, WTCI has failed to allege any convincing evidence or facts sufficient to establish that its bid represented fair market value. Such an unequivocal showing would be necessary before this Board could reverse the decision of BLM and award WTCI the lease based on the submitted bid. See Michael Shearn, 104 IBLA at 320. WTCI expresses frustration with the concept of fair market value, stating that it has "so many variables and assumptions involved that it is almost impossible to arrive at advance or 'rear view mirror' evaluations which are uncontentious [sic]. And it is presumptuous for any individual to pretend he or she can arrive at a figure which satisfies the myriad of input considerations required." (SOR at 17.) While WTCI asserts this in support of the notion that BLM should dispense with fair market value considerations altogether, BLM and this Board are bound by the fair market value requirement of 43 C.F.R. § 3525.5.

In addition, WTCI's comparable sales valuation contains significant internal flaws. In citing the three lease sales which WTCI erroneously presumes BLM ignored, WTCI asserts that those sales should be seen as more valuable than the Tract G sale, because the "federal royalty burden on Tract G makes the comparison [of value for those comparable sales] even higher * * *." (SOR at 15.) As BLM points out, however, those comparable sales were of Federal and state leases, also encumbered by Federal and state royalty provisions. WTCI's omission of this critical point also brings into doubt WTCI's fair market value analysis.

For all of these reasons, we fail to find any evidence in the record that WTCI's bid establishes fair market value that would justify overturning BLM's decision.

WTCI has requested a hearing, asserting that BLM's answer contains inaccurate and contradictory statements that raise issues of fact that can only be resolved at an evidentiary hearing. That request is denied. The Board will refer a case for a hearing in accordance with 43 C.F.R. § 4.415 only if the appeal presents an issue of material fact that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal. P & K Co., Ltd., 135 IBLA 166, 168 (1996); Pine Grove Farms, 126 IBLA 269, 275 (1993). In this case, WTCI has not pointed to any inaccurate or contradictory statement in BLM's answer. We find no material facts in dispute.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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Lisa Hemmer
Administrative Judge